STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 17, 2007
v	No. 265841 Oakland Circuit Court
ALAN CRAIG WOOD, Defendant-Appellant.	LC No. 05-201160-FH ON RECONSIDERATION

Before: Zahra, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Defendant was convicted by a jury of second-degree home invasion, MCL 750.110a(3), and receiving or concealing stolen property less than $200, MCL 750.535(5). He was sentenced as a fourth habitual offender, MCL 769.12, to 5 to 30 years in prison for home invasion and 93 days in jail for receiving or concealing stolen property. Defendant appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that there was insufficient evidence to convict him of the charged offenses. "[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). The prosecutor presented sufficient evidence of home invasion through the testimony of the complaining witness, who stated that he observed defendant break into his home and leave with stolen items. Moreover, the presence of items in defendant's home from previous break-ins was sufficient to establish the receiving or concealing offense. Some of the complainant's statements were inconsistent, calling into question his credibility. However, a prosecutor "need only convince the jury 'in the face of whatever contradictory evidence the defendant may provide,'" *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000), quoting *People v Konrad*, 449 Mich 263, 273 n 6; 536 NW2d 517 (1995), and factual conflicts are to be viewed in a light favorable to the prosecution. *People v Fletcher*, 260 Mich App 531, 562; 679 NW2d 127 (2004). Moreover, the issue of credibility was rightfully determined by the jury. *Id*. at 561. We find no basis for disturbing the jury verdict on this ground.

Defendant also argues that, over objection, the prosecutor improperly elicited testimony from Sergeant Mark Roettger to vouch for the complainant's credibility. A witness may not give

an opinion on the credibility of another witness. *People v Smith*, 425 Mich 98, 113; 387 NW2d 814 (1986); *People v Adams*, 122 Mich App 759, 767; 333 NW2d 538 (1983), rev'd on other grds 421 Mich 865; 364 NW2d 282 (1985). However, when Sergeant Roettger's comments are reviewed in context, it appears that his statements were not intended to bolster the complainant's credibility. Rather, defense counsel implied through his direct examination of Sergeant Roettger that he had not thoroughly investigated the complaint, and the comments were elicited to refute that suggestion. It appears that this testimony was intended to show that, at the time of the break-in, Sergeant Roettger had no reason to investigate further given that the complainant's account was consistent with the physical evidence, it did not call for further investigation, and there was nothing that prompted Sergeant Roettger to believe otherwise. Although the defense in this case was that the complainant manufactured the scene to cover up the fact that he had shot defendant with birdshot, Sergeant Roettger had no information that defendant would make such a claim at the time of his investigation. Moreover, a case for Sergeant Roettger believing that there was no cause for further investigation is supported by the fact that defendant ran from the police, rather than confronting police with the assertion that the complainant had shot him; the fact that the footprints in the snow appeared to match defendant's boots; the fact that the complainant said defendant was carrying a milk crate as he ran and a milk crate was found in the middle of the street when the police arrived; the fact that the call to 911 and the proximity of defendant to the home at the time the police arrived suggested that the complainant would not have had time to manufacture the scene before he called 911; and the fact that defendant did not react when apprehended in a way that would suggest he had been purposefully shot, as opposed to having been caught in the act of a break-in. Accordingly, we conclude that these comments do not warrant reversal.

Defendant next argues that his Fifth Amendment right not to testify was violated when, during the prosecutor's rebuttal closing argument, he summarized the evidence and noted that defendant could not explain it. Defendant did not object, and therefore review is for plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). However, we find no error. When read in context, the comment did not indicate that the prosecutor was highlighting or commenting on defendant's failure to testify. Rather, the comment pertained to defense counsel's inability to explain these discrepancies in his closing argument, and the lack of evidence to support the defense theory presented by defendant's counsel.

Defendant next argues that, despite his request, the Court declined to reread a stipulated jury instruction on the use of deadly force; defendant asserts that the omission of this second reading could have adversely affected the credibility determination. However, jury instructions are to be read in their entirety, not extracted piecemeal to establish error. If they fairly presented the issues to be tried and sufficiently protected the defendant's rights, there is no error even if they are somewhat imperfect. *People v Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001). Juries are presumed to have followed the instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). Here, the instruction was given. The trial took less than a day and there was only about a four-hour delay between the time of the instruction and the commencement of the jury's deliberations. There is no reason to presume that the jury did not follow the initial instruction or that the failure to repeat the instruction violated defendant's rights.

Finally, defendant argues that his sentence of 5 to 30 years in prison constitutes cruel and unusual punishment. He acknowledges that the range for his minimum sentence was properly calculated to be 36 to 142 months. Because defendant's minimum sentence is within the statutory minimum range, "this Court must affirm [under MCL 769.34(10)] unless the trial court erred in scoring the guidelines or relied on inaccurate information." *People v McLaughlin,* 258 Mich App 635, 670; 672 NW2d 860 (2003). Moreover, a sentence within the calculated range is presumptively proportionate. *People v Williams,* 198 Mich App 537, 543; 499 NW2d 404 (1993). Defendant's perception that his convictions were unreliable does not overcome this presumption. Sentences that are not disproportionate are not cruel or unusual. *People v Colon,* 250 Mich App 59, 66; 644 NW2d 790 (2002).

We affirm.

/s/ Brian K. Zahra
/s/ Richard A. Bandstra
/s/ Donald S. Owens